

# TRANSCRIPT OF PROCEEDINGS

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of:

Pendelton C Waugh, Et al

EB Docket No. 07-147

DATE OF HEARING: SEPTEMBER 12, 2007 VOLUME: 1

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554  
PRE-HEARING CONFERENCE

In the Matter of:

PENDLETON C. WAUGH,  
CHARLES M. AUSTIN,  
AND JAY R. BISHOP

EB Docket No.  
07-147

PREFERRED COMMUNICATION  
SYSTEMS, INC.

File No.  
EB-060IH-2112  
NAL/Acct No.  
200732080025

Licensee of Various  
Site-by-Site Licenses  
in the Specialized  
Mobile Radio Service

FRN No. 0003769049

PREFERRED ACQUISITIONS,  
INC.

FRN No. 0003786183

Licensee of Various  
Economic Area Licenses  
in the 800 MHz  
Specialized Mobile  
Radio Service

Wednesday, September 12, 2007

The pre-hearing conference came  
to order at 9:30 a.m. in room TWA-363 of the  
Federal Communications Commission, 445 12<sup>th</sup>  
Street, SW., Washington, D.C.

BEFORE

The Honorable Arthur I. Steinberg,  
Administrative Judge

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1 P-R-O-C-E-E-D-I-N-G-S

2 9:33 a.m.

3 ADMIN. JUDGE STEINBERG: Let's go  
4 on the record please. We're on the record  
5 now. This is a pre-hearing conference in EB  
6 Docket No. 07-147 which was designated for  
7 hearing by Order to Show Cause and Notice of  
8 Opportunity for Hearing FCC 07-125 released  
9 July 20th, 2007.

10 Nine separate issues were  
11 specified for hearing. Without going into  
12 any details, the issues delve into questions  
13 relating to undisclosed real parting  
14 interest, unauthorized transfer of control,  
15 misrepresentation, lack of candor, the  
16 effect of felony convictions upon basic  
17 qualifications, Section 1.6 violations,  
18 failure to respond fully and completely to  
19 official requests for information and  
20 whether the operation of certain facilities  
21 was discontinued for more than one year.

22 Ultimately, it must be determined

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1 whether the individuals and entities in  
2 question are qualified to be and remain  
3 Commission licensees and whether certain  
4 authorization should be revoked.

5 In addition, the Order to Show  
6 Cause authorized the imposition of  
7 forfeitures to the alleged violation of a  
8 number of Commission rules and provisions of  
9 the Communications Act.

10 By Order FCC 07M-26 released July  
11 26th, 2007, this case was assigned to me and  
12 the initial pre-hearing conference was  
13 scheduled for this morning.

14 Let me first state the  
15 appearances for the parties.

16 For Pendleton C. Waugh, if I'm  
17 pronouncing that correctly?

18 MR. SILVA: I believe you are.  
19 William Silva and I'll be assisted by Gerald  
20 Zuckerman.

21 ADMIN. JUDGE STEINBERG: Thank  
22 you. For Charles M. Austin?

1 MR. KELLER: Yes, Robert J.  
2 Keller and with David Kaufman to my right  
3 and we're also representing the two  
4 Preferred companies.

5 ADMIN. JUDGE STEINBERG: Okay.  
6 So, Preferred Communication Systems, Inc.  
7 and Preferred Acquisitions, Inc.

8 MR. KELLER: And Charles Austin.  
9 Yes.

10 ADMIN. JUDGE STEINBERG: And  
11 Charles Austin. Okay.

12 For J. R. Bishop, let the record  
13 reflect no response and he did file a Notice  
14 of Appearance on August 21st and as I stated  
15 before we got on the record that I received  
16 an e-mail from him late last night. It's --  
17 enclosed is a statement for the  
18 record/declaration in which he says he can't  
19 attend the conference today and he can't  
20 hire an attorney.

21 He says "I do not currently, nor  
22 have I ever, owned any stock in Preferred

1 Communications Systems, Inc. I have not  
2 worked as a consultant for the company for  
3 nearly 6½ years."

4 And he agrees to adopt the  
5 procedural schedule that we agree on today  
6 and he gives his mailing address, home and  
7 fax phone numbers and e-mail address and I  
8 will check to see whether the counsel for  
9 the parties have been cc'd on this e-mail  
10 and if they haven't, I will forward the e-  
11 mail to them. There's certificate of  
12 service attached to it. It's just a two-  
13 page document.

14 Okay. Now, for the Chief of the  
15 Enforcement Bureau?

16 MR. OSHINSKY: Your Honor,  
17 Gary --

18 ADMIN. JUDGE STEINBERG: Please  
19 stand.

20 MR. OSHINSKY: Gary Oshinsky and  
21 Anjali Singh representing the Enforcement  
22 Bureau.

1 ADMIN. JUDGE STEINBERG: Okay.  
2 Thank you. Let me first review what I have  
3 pending in front of me. See if we're all on  
4 the same page.

5 First, I've got the Enforcement  
6 Bureau's Motion for Adopting of Model  
7 Protective Order which was filed on August  
8 22nd.

9 What I -- I'm not going to do  
10 anything on that, but what I suggest you do  
11 is now that everybody's represented, that  
12 you get together with other counsel and see  
13 if you can all agree on something and rather  
14 than having any comments or anything on the  
15 Motion for the Model Protective Order, see  
16 if you can work something out and if you  
17 can't, then we can file comments on the  
18 model and then I can decide. I think it's  
19 better if you all agree to something.

20 MR. OSHINSKY: Your Honor, I would  
21 just note for the record that the motion's  
22 been pending for some time and no objection



1 has been filed.

2 ADMIN. JUDGE STEINBERG: Well,  
3 counsel just filed Notices of Appearance a  
4 couple of days ago and I don't think that  
5 this is something that Mr. Waugh and Mr.  
6 Bishop and Mr. Austin would pay much  
7 attention to, I don't think.

8 MR. OSHINSKY: Okay.

9 ADMIN. JUDGE STEINBERG: Even --

10 MR. KELLER: I also -- Your  
11 Honor, I also think by my calculation  
12 technically an opposition wouldn't be due  
13 until tomorrow --

14 ADMIN. JUDGE STEINBERG: Okay.

15 MR. KELLER: -- if you count by  
16 the normal rules.

17 ADMIN. JUDGE STEINBERG: Well,  
18 it's four plus three.

19 MR. KELLER: Ten plus three I  
20 believe. It's an opposition to a motion.  
21 So.

22 ADMIN. JUDGE STEINBERG: No. No,

1 we will go by 1.294. Four point. Sorry.  
2 Four plus three. It's an interlocutory  
3 request. We don't go by the --

4 MR. KELLER: Okay. Okay. Got  
5 you.

6 ADMIN. JUDGE STEINBERG: No, not  
7 by 1.45.

8 MS. SINGH: Yes, Your Honor,  
9 actually, according to Bureau counsel's  
10 calculation, the response to the motion  
11 would have been due Tuesday using the ten  
12 plus three not counting --

13 ADMIN. JUDGE STEINBERG: Yes, but  
14 I think it's better if you can work  
15 something out and given that the notices of  
16 -- I mean I would prefer that you deal with  
17 counsel rather than their clients and I  
18 think it's -- if you can work something out,  
19 that's great. If you can't, then I'll allow  
20 them leave to file comments if they want to.

21 MS. SINGH: Thank you, Your  
22 Honor.

1 ADMIN. JUDGE STEINBERG: Second  
2 thing I have is a petition to intervene  
3 which was filed by somebody named Charles D.  
4 Guskey G-U-S-K-E-Y on August 31st. He shows  
5 service only to the Bureau. Do you -- Mr.  
6 Keller or Mr. Silva, do you know about that?

7 MR. KELLER: We're familiar with  
8 it. Yes, we know. We know the pleading.

9 ADMIN. JUDGE STEINBERG: Okay.

10 MR. KELLER: It's available on  
11 the on-line system and I don't know whether  
12 you'd like me to serve --

13 ADMIN. JUDGE STEINBERG: Mr.  
14 Silva?

15 MR. SILVA: I'm not, Your Honor,  
16 but we'll try to get up to speed as fast as  
17 possible.

18 ADMIN. JUDGE STEINBERG: Okay.  
19 This is -- I think this was -- yes, this is  
20 in the ECFS system and responses will be due  
21 today.

22 The Bureau already responded.

1 They opposed the motion in a filing filed  
2 yesterday.

3 MR. KELLER: We do not intend to  
4 file anything one way or the other on that,  
5 Your Honor.

6 ADMIN. JUDGE STEINBERG: Okay.  
7 And, Mr. Silva, if you decide what you're  
8 going to do with this, could you just give  
9 me a phone call or an e-mail and let me know  
10 please.

11 MR. SILVA: Yes.

12 ADMIN. JUDGE STEINBERG: And then  
13 if there's nothing further filed, then I'll  
14 rule and if there is something further  
15 filed, then I'll look at that and rule.

16 Then there's a Motion to Defer  
17 Deadline for Requests for Admission filed by  
18 Mr. Austin and Preferred Communications and  
19 Preferred Acquisition and basically which  
20 was filed on -- it's the 10th of September  
21 and what they're basically saying is what we  
22 should do is roll in a date for responses to

1 Requests for Admissions and the procedural  
2 schedule.

3 And did you see that one?

4 MR. OSHINSKY: We did see it.

5 MS. SINGH: Yes, we did.

6 ADMIN. JUDGE STEINBERG: Okay.

7 Well, we can talk about that one later. If  
8 you have an objection then, we can deal with  
9 it.

10 Now, before we go to the dates, I  
11 have a -- it may be a stupid idea. It may  
12 be a brilliant idea. Given my track record,  
13 it's probably a stupid idea.

14 In the hearing designation order,  
15 actually, I expected you to fully disagree  
16 with that. In the hearing designation order  
17 in paragraph 50, they're talking about the  
18 lack of operation of the PCSI licenses.  
19 It's on page 18 and it says that, towards  
20 the bottom of the page, as to this matter  
21 the only issue for the presiding judge to  
22 determine is whether the licensee continued

1 the operation of its licenses for more than  
2 one year.

3 Then you go to the top of the  
4 page -- the top of paragraph 50, it says by  
5 operation of law, a wireless licensee's  
6 license is canceled for discontinuation if  
7 the licensee has failed to operate its  
8 licenses for over one year and not obtained  
9 permission from the Commission to  
10 discontinue such operations.

11 It occurred to me that why don't  
12 we just try that issue and forget about all  
13 the rest and if it's determined that there  
14 was a discontinuation, then the licenses  
15 automatically cancel. If it's determined  
16 that it wasn't a discontinuation, then we  
17 can try all the other issues and save  
18 ourselves a lot of time and effort and  
19 money.

20 Anybody want to talk about that  
21 or you want to think about that?

22 MR. KELLER: Your Honor, the

1 primary reason why that might not work is  
2 I'm not sure that this -- in fact, I'm  
3 fairly sure this is not the universe of  
4 licenses at issue in this hearing.

5 MR. OSHINSKY: That's right.

6 MR. KELLER: So, even if you were  
7 to rule adversely to us on that, there would  
8 still be other licenses that are not  
9 affected by this issue.

10 ADMIN. JUDGE STEINBERG: Okay.

11 MR. OSHINSKY: I can explain very  
12 briefly. This -- the OSE concerns two sets  
13 of licenses. One set is certainly governed  
14 by the paragraph 50 that you just read and  
15 that's part of our allegations, our charges.  
16 The other set is subject to a waiver which  
17 is --

18 ADMIN. JUDGE STEINBERG: Okay.

19 MR. OSHINSKY: -- currently  
20 before the Wireless Telecommunication  
21 Bureau. It has not been rules on. In fact,  
22 there's not in a posture to be ruled on and

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1 we're asking you to make certain findings of  
2 fact in regard to that, but not the ultimate  
3 decision.

4 MR. KAUFMAN: Can you speak up?

5 MR. OSHINSKY: I'm sorry.

6 MR. KAUFMAN: Can't hear you.

7 MR. OSHINSKY: I'm saying simply  
8 that the OSE refers to two different sets of  
9 licenses. One are site-by-site licenses  
10 which are governed by paragraph 50 which  
11 would be affected by paragraph 50, and the  
12 other set are a set of auctioned licenses  
13 which are currently subject to a waiver  
14 request which is pending before the Wireless  
15 Telecommunications Bureau.

16 MR. KAUFMAN: And that you're not  
17 governed by 90.157.

18 MR. OSHINSKY: Right. Would not  
19 be governed.

20 ADMIN. JUDGE STEINBERG: Okay.

21 MR. OSHINSKY: Because there's no  
22 allegation that they were ever operated and



1 the only question involved surrounds the  
2 proffer and the waiver for -- the request  
3 for a waiver.

4 ADMIN. JUDGE STEINBERG: Okay.  
5 Yes. Yes, and I'm -- my -- the hearing in  
6 that issue on the waiver is limited to just  
7 whether the acts alleged in the waiver  
8 requests are truthful basically.

9 MS. SINGH: Yes.

10 MR. OSHINSKY: That's right.

11 ADMIN. JUDGE STEINBERG: And then  
12 -- okay. That I picked up.

13 Okay. So, my brilliant idea for  
14 shortening the hearing proved to be less  
15 than brilliant.

16 Okay. What type of discovery is  
17 being contemplated? Now, you've already  
18 filed requests for admission of facts and  
19 genuineness of documents and then is anybody  
20 planning interrogatories?

21 MR. OSHINSKY: Yes, Your Honor,  
22 we are.

1 ADMIN. JUDGE STEINBERG: Okay. I  
2 have trouble with interrogatories in that  
3 usually they're not answered by the people  
4 that really have the knowledge, but they're  
5 answered by the lawyers and they're answered  
6 in such a way that you really don't get  
7 answers.

8 I'm inclined to say use -- to  
9 limit interrogatories. Use to only -- for  
10 the only purpose of identifying individuals  
11 with personal knowledge of the facts. Then  
12 when you figure out who's got personal  
13 knowledge of the facts, go out and depose  
14 the people because then you get the answers  
15 from them and then there are the objections  
16 to the interrogatories and the Motions to  
17 Compel and the oppositions to the Motion to  
18 Compel. It's very inefficient.

19 MR. OSHINSKY: Your Honor, I  
20 would -- I'd say that -- on behalf of the  
21 Bureau that the questions here are very,  
22 very fact based and the more that we can

1 flesh out those facts ahead of time even  
2 before depositions, will limit the amount of  
3 -- limit the length of the depositions and  
4 will also very probably limit the length of  
5 the hearing. So, I understand your thinking  
6 because it is true that a lot of times all  
7 you get is a legalistic formation rather  
8 than an actual answer, but here we have so  
9 many documents that are pending. So many  
10 documents that may require identification at  
11 deposition and so many documents that may be  
12 entered in at hearing. I would ask that we  
13 be allowed to expand our interrogatories  
14 beyond what Your Honor suggests.

15 ADMIN. JUDGE STEINBERG: Any  
16 comments?

17 MR. KELLER: No objection one way  
18 or the other on that, Your Honor.

19 ADMIN. JUDGE STEINBERG: Mr.  
20 Silva?

21 MR. SILVA: We do not object  
22 either, Your Honor.

1 ADMIN. JUDGE STEINBERG: Okay.  
2 Then we'll do it the regular way. Gosh, I'm  
3 going dry. This happened the last time I  
4 was here, too.

5 Anybody plan requests for  
6 document production?

7 MR. OSHINSKY: Yes, we do, Your  
8 Honor.

9 MR. KELLER: We would certainly  
10 plan that as well, Your Honor.

11 ADMIN. JUDGE STEINBERG: Okay.  
12 You know that the document production you  
13 really can't file against the Bureau.

14 MR. KELLER: Well, we -- it  
15 depends on the -- I think we can ask for  
16 production of documents. Whether it's going  
17 to be formally a request for production or  
18 whether we have to go through FOIA is a  
19 different story, but in particular, we would  
20 be looking for any documents provided by  
21 outside sources not by -- but, I understand  
22 it would be subject to the normal privileges

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1 and objections and we would go through the  
2 proper procedures. If it needs to be by  
3 FOIA, we would go by FOIA.

4 ADMIN. JUDGE STEINBERG: I think  
5 it has to be by FOIA if I remember.

6 MR. KELLER: But, we do -- I mean  
7 obviously, the Bureau has the burden of  
8 proceeding and the burden of proof here.  
9 So, we suspect there's going to be more  
10 discovery on their end, but assume we're  
11 going to set dates here and we may  
12 participate in one or more of these very  
13 responsive discovery areas. So, we will  
14 abide by the --

15 ADMIN. JUDGE STEINBERG: Okay.

16 MR. KELLER: -- schedules we all  
17 agree to here.

18 ADMIN. JUDGE STEINBERG: Do you  
19 know, Mr. Silva, what you're planning --

20 MR. SILVA: Oh, we have no  
21 present intention to seek documents, but  
22 since we're so new to the case, Your Honor,

1 we reserve the right to change our mind on  
2 that.

3 ADMIN. JUDGE STEINBERG: Sure.  
4 Okay. Just a general statement with respect  
5 to discovery. I'd appreciate it if you'd  
6 all make a good faith attempt to work out  
7 your differences among yourselves..

8 Serious and genuine effort should  
9 be made to reach a compromise with each  
10 other if there's a dispute.

11 I don't want anybody coming to me  
12 for a ruling on a discovery matter without  
13 first attempting to reach an agreement.  
14 Come to me only for ruling only if there's  
15 been a complete inability to reach an  
16 accommodation.

17 In this connection, any request  
18 for a ruling on a discovery matter has to  
19 include a certification that counsel for the  
20 parties involved made a good faith attempt  
21 to resolve the dispute but could not do so.  
22 I think that's -- I've stolen that I think

1 from the fair rules and I think it's a good  
2 idea.

3 Just don't get so mad at each  
4 other that you don't talk anymore.

5 Any other matters that we have to  
6 talk about before we go off the record to  
7 talk about dates?.

8 MR. KELLER: While we're on that  
9 last point, Your Honor, what is your  
10 preference on -- related to that?

11 Situations where counsel for the various  
12 sides agree on extensions of time and that  
13 sort of thing. Can we just let you know or  
14 do we have to file a motion?

15 ADMIN. JUDGE STEINBERG: I love  
16 it. I love it.

17 MR. KELLER: And if we agree to  
18 an extension, can we just --

19 ADMIN. JUDGE STEINBERG: If you  
20 can agree to do it informally --

21 MR. KELLER: And then we don't  
22 need to ask you for a specific ruling.

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1       Okay.

2                   ADMIN. JUDGE STEINBERG:  No, just  
3       let me know or file a statement for the  
4       record.

5                   MR. KELLER:  All right.

6                   ADMIN. JUDGE STEINBERG:  Or just  
7       something --

8                   MR. KELLER:  Got you.

9                   ADMIN. JUDGE STEINBERG:  -- that  
10       lets everybody know.  The more you can agree  
11       the happier I am and I can stay in my  
12       office.

13                   In terms of pleadings, I don't  
14       get stuff the way we used to get stuff and  
15       there's a lot of stuff that comes in I don't  
16       see or I wouldn't see.  So, if you could  
17       provide me with courtesy copies of all  
18       pleadings filed in the case.

19                   The Bureau usually has a stamped  
20       copy hand carried to me on the day of  
21       filing, but if the other parties could just  
22       fax me courtesy copies showing the



1 secretary's stamps and then I know it's  
2 filed.

3 Mr. Keller, you filed something  
4 electronically.

5 MR. KELLER: Yes, but you should  
6 have found on the back of it a  
7 certification.

8 ADMIN. JUDGE STEINBERG: Yes, I  
9 did. That's the first one of those I've  
10 seen.

11 MR. KELLER: Yes.

12 ADMIN. JUDGE STEINBERG: You know  
13 if -- just some proof that it's been filed.  
14 Because they sometimes don't wind up in the  
15 ECFS for weeks and then I won't -- and I  
16 don't know if it's actually filed or not and  
17 I don't care if you -- you don't have to get  
18 it to me on the day of, but if you get it to  
19 me within a day or two, just so I know  
20 something exists.

21 MR. KAUFMAN: Can I ask a  
22 question? Is that faxed copy is that in